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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,122	06/20/2005	Michael Demitz	104035.283800	8843
7055 7590 05/15/2008 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER YU, GINA C				
ART UNIT 1617		PAPER NUMBER		
NOTIFICATION DATE 05/15/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

# Office Action Summary

**Application No.**

10/511,122

**Applicant(s)**

DEMITZ ET AL.

**Examiner**

GINA C. YU

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on January 28, 2008. Claims 18-41 are pending. Claim rejection made under 35 U.S.C. §§ 102 (a) and 103(a) in the previous Office action dated September 27, 2007, are withdrawn in view of the claim amendment made by applicant. Obviousness double patenting rejections are withdrawn since the cited copending applications have been abandoned. New rejections are made to address new claims.

In the previous Office action, the rejection statement incorrectly cites prior arts that are relied upon in the rejections. As applicant has correctly pointed out in the response, Muller (US 6248338 B1) and Flick (Cosmetic Additives, 1991) should have been cited in the rejection statements. Since applicant had a full opportunity to respond to the Office action, it is viewed proper to examine the amended claims and make this Office action final.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 33-35 are rejected under 35 U.S.C. 102(a) as being anticipated by Muller (US 6248338 B1).**

Muller discloses a hair rinse comprising 0.5 % of quaternized guar derivative (Jaguar C-162, hydroxypropyl guar hydroxylpropyltrimonium chloride), 2.7 % of pregelatinized, hydroxypropylated di-starch phosphate, and 3 % of myristyl alcohol (Lanette 14, C14 fatty alcohol). See Example 1. See instant claims 1-4, 8-10, 12, 14-17. Muller,

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discussed above, further teaches that the pregelatinized starch derivative is used in 0.1-20 % of the aqueous phase of the composition that can be about 5-98 % by weight of the total composition. See col. 5, lines 11 – 23; instant claim 13. The surfactants of instant claim 11, such as cocoamidopropyl betaine (Tego Betaine), are taught in the table shown in columns 9-10, and used in formulations examples 4-9.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 18-32, 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller as applied to claims 33-35 as above, and further in view of Peffly et al. (US 5997886).**

Muller fails to disclose the specific cationic polymer of instant claim 36. The reference teaches that the composition may be in any form including spray, gel or foam.

Peffly teaches adding hair styling or hair shine agents to hair styling products in combining with hair conditioning agents. Suitable cationic polymers include quaternized hydroxyethyl cellulose ethers (Ucare Polymer JR 400) and hydroxypropyl guar hydroxypropyltrimonium chloride. Nonionic polymers, PVP/VA copolymers and anionic acrylate copolymers are also taught. See col. 9, line 43 – col. 11, line 13; col. 21, line 27 – col. 22, line 24; examples.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Muller and add to the composition hair

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styling or shine agents as motivated by Peffly because the latter teaches combining hair styling and conditioning agents to make hair care products. The skilled artisan would have had a reasonable expectation of successfully producing a stable hair care composition having both hair styling and conditioning benefits since both prior arts teach foam products.

**Claims 26-32, 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller as applied to claims 33-35 as above, and further in view of Flick (Cosmetic Additives, 1991).**

Muller is relied upon as discussed above. The reference teaches that the starch acts as a stability improver, a viscosity regulator, a (co) emulsifier, a skin feel improving agent, and an agent for improving hairdressing characteristics. See col. 5, lines 23 - 65. Muller teaches to formulate the composition in the form of a high viscosity alcoholic gel, and optionally to add additional thickening agents. See col. 7, line 66 – col. 8 line 44.

While the reference generally teaches adding cationic polymers in its hair conditioning compositions, the reference does not specifically teach adding cationic cellulose of instant claim 5 and vinylpyrrolidone/vinyl acetate copolymer of instant claim 7.

Flick teaches that cationic quaternized celluloses are useful in hair care formulations and enhances wet and dry combing, increases body and reduces flyaway. See p. 172. The reference also teaches that vinylpyrrolidone/vinyl acetate copolymers are film-

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formers used in hairsprays, gels, mousses, lotions, hair thickeners, etc. See p. 304.

The reference teaches using 1-4 % by weight.

With respect to claim 36, the Flick reference would have motivated one of ordinary skill in the art to modify the teachings of Muller and incorporate the cationic quaternized celluloses of Flick, because both prior arts are directed to formulating hair care products, and Flick teaches that the modified cationic celluloses improve combining properties and increases body and reduces flyaway. The skilled artisan would have had a reasonable expectation of successfully producing a hair care products with the advantageous hair conditioning properties of the cationic celluloses.

Regarding claim 26, it would have been obvious to the skilled artisan to modify the teachings of Muller by formulating a hair styling compositions comprising PVP/VA copolymers as a film-forming agent, as motivated by Flick. Since Muller teaches the use of pregelatinized starch derivatives in hairdressing compositions, and also in making a gel product, the skilled artisan would have had a reasonable expectation of successfully formulating a hair styling gel products that provides good hairdressing properties and film-forming properties.

**Claims 18-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller in view of Rollat et al. (US 20030147834 A1).**

Muller is discussed above. The reference fails to teach anionic or amphoteric copolymers.

Rollat teaches that anionic acrylate copolymers and amphoteric copolymers (Amphomer) are hair styling copolymers suitable for styling conditioner, spray, conditioning spray, lotion, gel, tonic, etc. See abstract, [0131], [0019]. The reference teaches adding 0.01-3 % by weight of cationic conditioning polymers to the styling compositions. See [0053-0101].

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Muller by incorporating anionic or amphoteric hair styling copolymers as motivated by Rollat, because the latter teaches that hair styling copolymers and conditioning polymers are combined to make a hair care product having both beneficial conditioning and styling properties. Since the references teach similar type of formulations (gel, lotion, etc) the skilled artisan would have had a reasonable expectation of successfully producing a stable composition.

### ***Response to Arguments***

Applicant's arguments filed on January 28, 2008 have been fully considered but they are not persuasive in part and moot in view of new grounds of rejection in part.

#### **102 (a) rejection in view of Muller**

Applicant asserts that the reference fails to disclose anticipate claim 33 because the claim does not recite hydroxypropyl guar hydroxypropyltrimonium chloride. According to applicant's disclosure in p. 5, lines 1-2, guar hydroxypropyl trimonium chloride is a cellulose derivative which is depolymerized guar gum derivative which has been quaternized, thus meeting the instant claim limitation of both cellulose derivative and depolymerized and subsequently quaternized guar gum derivative.

Applicant's argument regarding polyvinylpyrrolidone is moot in view of the applicant's claim amendment.

103(a) rejection made over Muller further in view of Flick

Applicant asserts that Muller does not discuss any polymers which are different from the starch derivatives taught therein, while admitting that the guar gum derivative and polyvinylpyrrolidone are employed in the prior art. Applicant "speculates" that the only intended functions of these polymers are that of an additional thickener. The argument is unpersuasive. There is no explicit or implicit teaching or suggestion in Muller that teaches away from adding additional polymer in the composition or to limit a skilled artisan to incorporate already known beneficial hair cosmetic ingredients to further improve upon the Muller invention.

Applicant also asserts that there is no 'general teaching' to use cationic conditioning polymers in Muller because the reference merely teaches a specific type of cationic polymer and there is no specific explanation of the function of the polymer. The argument is also unpersuasive because the reference teaches the use of cationic compound as conditioning agents. Even if the guar gum is used as a thickening agent, it would not have deterred a skilled artisan to incorporate the cellulose derivative of Flick because Flick teaches the specific benefits of using the cellulose derivative in hair care products (good combing property, preventing fly-away, etc).

Applicant argues that a routineer would not have been motivated to substitute the guar gum derivative with the cellulose derivative of Flick because of the different amounts which these polymers are used. The argument is unpersuasive because the



rationale for the present rejection is that a skilled artisan would have added the cellulose derivative by the disclosed amount rather than replacing the guar gum derivative.

Applicant also argues that adding a film-forming polymer of hair styling composition to a shaving composition to Muller would have been a hind sight. In fact, the ground of the present rejection is based on obvious modification of Muller's hairdressing products which is not limited to shaving compositions comprising polyvinylpyrrolidone as applicant argues.

Obviousness double patenting rejections

Applicant's request to hold the obviousness double patenting rejections in abeyance is noted, but the rejections are withdrawn since the cited copending applicants have been abandoned.

***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/

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Primary Examiner, Art Unit 1617